Ashish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4282 OF 2024
WITH
INTERIM APPLICATION NO.1637 OF 2025
IN
BAIL APPLICATION NO.4282 OF 2024

Ashish Pravin Bhalerao … Applicant

V/s.

State of Maharashra … Respondent

Mr. Dinesh Patankar for the applicant.

Mrs.Mahalakshmi Ganapathy, APP for respondent No.1-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 20, 2025

PRONOUNCED ON : AUGUST 22, 2025

ORDER :

1. By the instant bail application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the applicant is seeking his release on regular bail in connection with Crime Register No. 191 of 2023 registered with Kalachowki Police Station, Mumbai. The said crime has been registered for the offences punishable under Sections 406, 409, 420, 120-B and 34 of the Indian Penal Code, 1860 ("IPC" for short) read with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act" for short).

2. The case of the prosecution, as can be gathered from the First Information Report, is that the original informant, Smt. Kashibai Balu Raymane, lodged a report at Kalachowki Police Station, alleging that she had opened Account No. 419 in the year 2011 with Mumbai Nagari Sahakari Pathsanstha at Kharghar, Navi Mumbai (hereinafter referred to as "the Pathsanstha"). According to her, the account was opened on the assurances extended by one of the Directors of the Pathsanstha, namely, Ashish Pravin Bhalerao. On the strength of such assurances, the informant deposited an initial sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) in the form of a Fixed Deposit with the said Pathsanstha and received regular interest thereon in the initial period.

3. The informant has further alleged that having developed faith and confidence in the said financial establishment, she continued to invest further amounts with the Pathsanstha. Between 07th January 2014 and 26th April 2022, she is stated to have made further deposits, thereby investing a cumulative amount of Rs. 46,54,500/- (Rupees Forty-Six Lakhs Fifty-Four Thousand Five Hundred only) towards share certificates and allied instruments of the Pathsanstha.

4. It is alleged that when the informant urgently required funds for her medical treatment, specifically for undergoing gallstone surgery, she approached the Directors of the Pathsanstha, namely, Ashish Bhalerao, Usha Sawant, Amit Bhalerao, as well as the Manager and President, one Shantaram Tupe, seeking refund of her matured Fixed Deposit Receipts. At that time, she was instructed to submit her request in writing. Acting on such instruction, she submitted a formal written application and also dispatched the same by Speed Post. However, no action was taken by the concerned office bearers.

5. The informant has further alleged that despite repeated personal visits and several assurances given by the above-named Directors and office bearers, her matured deposits were never refunded. Being left with no choice, she approached the statutory authority i.e., the Commissioner and Registrar of Cooperative Societies, Pune, by filing a Complaint Application. The said authority, by its order dated 22nd June 2023, directed the Pathsanstha to refund the amount within 10 days and submit compliance.

6. The informant has further alleged that, like her, another investor, namely, one Mr. Rohit Pisal, was also directed by the authority to be refunded his invested amount. However, in his case too, the directive was not honoured. It is further alleged that the Cooperative Authority had also directed the Pathsanstha to furnish its financial accounts for the years 2019 to 2022 to the Special Auditor, but that statutory direction too was not complied with by the concerned Directors and officials.

7. The allegations of the informant also disclose that not only she, but several other investors including one Mr. Pyarelal Gupta and Mr. Rohit Pisal, were similarly deceived. It is alleged that the Directors, President, Manager and other office bearers of the Pathsanstha, acting in concert and with dishonest intention, misappropriated a total amount of Rs. 1,41,84,191/- (Rupees One

Crore Forty-One Lakhs Eighty-Four Thousand One Hundred Ninety-One only), thereby causing wrongful loss to the investors and unlawful gain to themselves.

8. Left with no other legal recourse, the informant lodged the present report at Kalachowki Police Station. On the basis of her report, the present FIR came to be registered as CR No. 191 of 2023 on 4th August 2023 for the offences punishable under Sections 406, 409, 420, 120-B and 34 of IPC, read with Section 3 of the MPID Act, 1999.

9. Learned Advocate for the applicant submitted that the essential ingredients of the offences alleged against the applicant are not made out in the facts of the present case. According to him, the First Information Report itself has been registered in haste and without following the proper statutory procedure. He pointed out that under the provisions of the Maharashtra Co-operative Societies Act, 1960, a forensic audit by a duly appointed auditor is a precondition for fixing liability of office bearers of a co-operative society. In the present case, no such final forensic audit has been conducted and, in fact, the process of audit is still pending. Therefore, according to the learned counsel, the very foundation of the prosecution case is weak and unsustainable in law.

10. He further submitted that the society in question has 5519 members, out of which only 112 members have lodged their grievances with the investigating agency. This, according to him, itself shows that the prosecution has projected the case out of proportion and the allegations are not reflective of the entire body of members of the society.

11. Learned Advocate also submitted that the specific accusation that the applicant has transferred certain amounts from the society to his personal account is baseless and without any documentary support. He pointed out that the interim audit report relied upon by the prosecution is prepared only on the basis of incomplete records and selective documents. According to him, the said audit report cannot be treated as conclusive, particularly when the final forensic audit is still awaited.

12. It was further argued that the allegation regarding transfer of Rs. 1,00,00,000/- (Rupees One Crore only) from the suspense account of the society is not attributable to the applicant. He submitted that the said transaction, as per the record, is attributed to the then Chairman of the society, and the applicant had no knowledge or role in the same.

13. The learned Advocate also referred to the allegation of a transaction involving Rs. 20,90,000/- (Rupees Twenty Lakhs Ninety Thousand only) between the applicant and one Mr. Siddharth Patel. He submitted that the said transaction took place from the applicant's personal savings account and had nothing to do with the accounts or funds of the society. Similarly, it was argued that the prosecution has alleged certain transactions of M/s Adinath Enterprises with the society. However, in reality, Adinath Enterprises has no account whatsoever with the society, and the auditor has mistakenly considered the account of an entirely different entity, namely M/s Adinath Developers, while attributing liability to the applicant.

14. The learned Advocate submitted that the auditor has also failed to take into account material documents and circumstances which were in favour of the applicant. On the contrary, it is the case of the applicant that during the period when the society was facing financial difficulty, he had himself deposited huge amounts to safeguard the interests of the members and to ensure smooth functioning of the society.

15. Lastly, it was argued that the applicant has been in judicial custody since 7th February 2024. The investigation is already complete and the charge-sheet has been filed on 3rd May 2024. Therefore, no further custodial interrogation of the applicant is necessary. In these circumstances, the learned Advocate urged that the applicant deserves to be released on bail.

16. Per contra, the learned APP for the State opposed the application and submitted that the applicant, while holding the post of Secretary of the Co-operative Society, misused his fiduciary authority and position of trust. It is submitted that he withdrew large amounts of money by making debit entries in his "D.S. Savings Account" even when there was no balance available in the said account. As a result, a continuous debit balance is reflected in the applicant's D.S. Savings Account at the Society level. On perusal of the bank statements, it is clearly evident that the monies were deposited in the personal account of the applicant and not credited to any account connected with the business or functioning of the Society. It is further submitted that there is no record on file to show that any collateral security was offered by the applicant for obtaining such amounts. There are no loan documents, nor any resolution of the Managing Committee or other record showing sanction of any such loan in favour of the applicant.

17. It is further submitted by the learned APP that depositors' money was diverted and deposited in the applicant's personal D.S. Savings Account. For this purpose, a "Deposit Suspense Account" was opened at the Society level and an amount of Rs. 1,00,00,000/- (Rupees One Crore only) was transferred from this account to the applicant's personal account. The learned APP pointed out that the balance shown by the applicant in his personal D.S. Savings Account as on 1st April 2018 does not match with the balance reflected in the financial statement of the Society, which indicates manipulation of records for personal gain.

18. The learned APP also referred to the statement of Adinath Enterprises' Savings Account provided by the Society, which shows that several payments were made to different persons from the said account. The statement reveals that there was a continuous debit balance in the said account, reflecting misuse of Society's funds without recovery or security.

19. It is further pointed out that the applicant, along with another, had also received amounts from the "SOD account" of the Society maintained with Abhyudaya Co-operative Bank. As per the bye-laws of the Society, loans against deposits can be sanctioned only up to 85% of the fixed deposit amount available with the Society. However, in complete disregard of the bye-laws, the applicant misused his authority by withdrawing amounts from his Savings Account and D.S. Account at his own convenience, without furnishing any security and without offering any fixed deposit as collateral. The amounts so withdrawn were used for his personal business purposes. It is further submitted that no interest was ever paid by the applicant to the Society on the sums withdrawn from the Society's bank accounts, thereby causing direct financial loss to the depositors.

20. The learned APP also brought to the notice of the Court that the Society was maintaining an Overdraft Account with Sahyadri Co-operative Bank. The office bearers of the Society, including the applicant, transacted in the said Overdraft Account without pledging fixed deposits as security. This resulted in irregular operations, and consequently, the concerned bank filed a complaint with Kalachowki Police Station on 27th August 2021 against the Chairman of the Society, the present applicant, and certain employees of the bank.

21. The learned APP further submitted that the "Gold Mortgaged Account" showing an amount of Rs. 1,40,27,010/- (Rupees One Crore Forty Lakhs Twenty-Seven Thousand Ten only) in the balance sheet of the Society as on 30th March 2020 was found by the auditors to be incorrect. The auditors, whose statements have been recorded by the investigating agency, have confirmed that the said figure was not a true reflection of the actual balance and was, in fact, manipulated to project a false financial position of the Society.

22. On the strength of these circumstances, the learned APP contended that the applicant has clearly not utilized the deposit amounts of investors for the legitimate purposes of the Society. Instead, he has dishonestly withdrawn and diverted the funds entrusted to the Society for his own personal benefit. Such conduct, it is submitted, fulfills the essential ingredients of the offence of "criminal breach of trust by a public servant, banker, merchant or agent" under Section 409 of the IPC. The purpose of deposit by the members was to enable the Society to conduct its regular business of disbursing loans to members, earning higher interest thereon, and in turn paying interest on the fixed deposits of investors. However, by siphoning and diverting such funds for his own use, the applicant has not only committed a serious breach of trust but also caused wrongful loss to a large body of investors and wrongful gain to himself, thereby squarely attracting Section 409 of IPC.

23. Learned Advocate appearing for the intervener also strongly opposed the bail application. He submitted that the intervener, a senior citizen aged about 75 years, was lured into investing her hard-earned money in the Society. According to him, the applicant and other office bearers misrepresented to her that the investment scheme of the Society was for a period of 99 days, and accordingly, she renewed her deposits from time to time. It is further submitted that though the receipts were renewed for 99 days, on several occasions no receipts were actually issued, yet she was assured of safety of her deposits. However, when the period of deposits was over, she neither received back the principal amount nor the promised interest. The learned Advocate pointed out that to create a false sense of security, the applicant and the Chairman portrayed to the investors that the Society was financially sound and there was no difficulty in repayment, and that everyone's money would be repaid. Despite such assurances, neither the applicant nor the Chairman repaid the invested amount of the intervener. It is further submitted that the receipts which the intervener did receive bear the signature of the applicant in his capacity as Director and Secretary of the Society. Thus, it is clear that the applicant was actively involved in the management of the Society and was in a position of control since the very beginning.

24. The learned Advocate further pointed out that this is not an isolated incident against the applicant. Present is the fourth First Information Report registered against him, where allegations of cheating, forgery, and misappropriation have been made. He submitted that the first FIR against the applicant was registered in the year 2017 at Vadgaon Maval, Pune. The second FIR came to be lodged by Sahyadri Bank in the year 2021, bearing FIR No. 386 of 2021, at Kalachowki Police Station. The third FIR was lodged by Mumbai Citizens Credit Institution, bearing FIR No. 191 of 2023, again at Kalachowki Police Station. The fourth FIR was lodged by one Dr. Sanjay Jain, bearing FIR No. 139 of 2024, also at Kalachowki Police Station. These repeated criminal cases over a span of years clearly demonstrate that the applicant is continuously indulging in similar offences since 2017.

25. The learned Advocate further submitted that even after registration of the present case, in August 2023, the applicant did not desist from such activities. On the contrary, he started a new bogus financial company in the name of his daughter under the name and style "Kasturi Finserv." The said entity was floated from the rented premises belonging to the applicant and its address is also shown as that of the applicant. Through this company, he again began to collect money from common and unsuspecting people. It is submitted that the applicant has been systematically taking money from poor and middle-class people, adopting various tricks, and diverting such ill-gotten funds into purchase of immovable properties.

26. It is also submitted that the Society was maintaining several gold loan accounts. However, upon investigation by the administrator and on audit being conducted, it was revealed that in fact no physical gold ornaments corresponding to such accounts were found in any of the lockers of the Society. This finding is borne out by the statements of the administrator and the auditors recorded by the investigating agency. Such a discovery points towards fabrication and manipulation of records by the applicant. It is further brought on record that out of 7 branches of the Society, the records of only 3 branches were made available for audit, and the remaining branch records were not traceable, which again suggests deliberate concealment and destruction of evidence.

27. The learned Advocate thus submitted that the diversion of funds and creation of fictitious accounts clearly indicate manipulation of financial resources of the Society at the behest of the applicant. It is his submission that the applicant has deliberately misappropriated crores of rupees belonging to depositors by portraying bogus loan accounts, and such conduct fulfills the necessary ingredients of the offences of cheating, forgery, criminal breach of trust, and misappropriation registered against him. Considering the gravity of the offence, the magnitude of financial loss to innocent depositors, and the applicant's continuous involvement in similar economic offences, the learned Advocate urged that the bail application deserves to be rejected.

28. I have carefully considered the rival submissions advanced on behalf of the applicant, the learned APP for the State, and the learned Advocate for the intervener. I have also perused the FIR, charge-sheet and other material placed on record.

29. At the outset, it is to be noted that the allegations against the applicant are not of an isolated or private dispute but pertain to large-scale financial irregularities in a Co-operative Society which holds deposits of thousands of members.

30. The prosecution case, as reflected in the FIR, audit reports and statements of witnesses, reveals that huge amounts entrusted to the Society by common depositors have been diverted to the personal account of the applicant without sanction, security, or compliance with bye-laws of the Society. The material collected during the course of investigation shows prima facie that the money deposited by innocent members of the Society was not utilized for the legitimate business purposes of the Society but was siphoned off for the personal gain of the applicant and other office bearers. The bank statements, audit reports and statements of witnesses reveal that large amounts were directly transferred to the applicant's personal account without sanction or authority. Such transfers were made without any loan documents, without approval of the Managing Committee, and without any collateral security. The very nature of these transactions, coupled with the continuous debit balances in the applicant's D.S. Savings Account, indicates dishonest intention and misappropriation at the inception.

31. It is a settled principle that at the stage of bail, the Court is not expected to weigh the evidence as in trial, but only to examine whether the material placed before it discloses a prima facie case. In the present matter, the documents on record unmistakably indicate that the applicant was in a position of trust, being Secretary of the Society, and instead of protecting the interest of depositors, he diverted their money for his own personal use. The very purpose of deposits was to enable the Society to conduct its lawful activities of lending to members and generating income for repayment of fixed deposit receipts. By diverting funds for personal benefit, the applicant not only breached the trust reposed in him by depositors but also caused huge financial loss to the Society.

32. Such conduct squarely attracts the provisions of Section 409 of the IPC, which criminalises breach of trust by a banker or person entrusted with property. The dishonest use of depositors' money for personal benefit, without authority, satisfies the ingredients of criminal breach of trust as well as cheating. The Supreme Court has time and again held that economic offences involving cheating of a large number of investors are grave offences and have wider ramifications on public confidence in financial institutions. The material therefore demonstrates that the offence is serious in nature, systemic in design, and cannot be treated as a mere dispute between a member and the Society.

33. Thus, on a prima facie consideration of the record, it emerges that depositors' hard-earned money has been dishonestly siphoned off for personal gain of the applicant, which goes to the root of the allegations and weighs heavily against grant of bail.

34. The contention of the learned Advocate for the applicant that the audit is incomplete and that only a small number of members have raised grievances, cannot dilute the seriousness of the allegations. The law is well settled that at the stage of bail, the Court is not expected to conduct a mini-trial but only to examine whether there is a prima facie case and whether custodial liberty of the applicant would prejudice investigation or larger public interest. The material placed on record is sufficient to indicate involvement of the applicant in diversion and misappropriation of depositors' funds.

35. The allegations further disclose that a sum of Rs. 1,00,00,000/- was transferred from a suspense account of the Society to the applicant's personal account. There is no explanation as to how such a large transaction could take place in absence of any collateral, loan documents or sanction by the Managing Committee. Similarly, continuous debit balances in the applicant's D.S. Savings Account, and transactions from accounts like Adinath Enterprises, suggest manipulation of records to cover up diversion of funds.

36. The learned APP further submitted that the "Gold Mortgaged Account" showing an amount of Rs. 1,40,27,010/- (Rupees One Crore Forty Lakhs Twenty-Seven Thousand Ten only) in the balance sheet of the Society as on 30th March 2020 was found by the auditors to be incorrect. The auditors, whose statements have been recorded by the investigating agency, have categorically confirmed that the said figure was not a true reflection of the actual balance and was, in fact, manipulated to project a healthier financial position of the Society than what actually existed.

37. This aspect assumes great significance because the gold loan portfolio of a co-operative society is generally considered to be one of the most secured forms of lending, backed by tangible security in the form of gold ornaments. If the records of such gold mortgaged accounts are fabricated and there is no actual gold available corresponding to the entries shown, it clearly demonstrates that the accounts were deliberately manipulated to mislead the members and regulatory authorities. Such manipulation amounts to falsification of accounts and creation of fictitious assets, which is not a mere irregularity but a deliberate act of deception.

38. The very fact that the auditors, being independent professionals, have opined that the gold mortgaged account does not reflect the true position, prima facie establishes that false entries were made in the balance sheet. This strengthens the prosecution case that the applicant, being in charge of the management of the Society, played an active role in preparation of such false accounts. The purpose of such inflated figures was evidently to conceal the financial mismanagement and to induce continued deposits from unsuspecting members by showing that the Society was financially sound.

39. At this stage, when auditors have confirmed that the figures in the balance sheet were incorrect and manipulated, the Court cannot ignore the possibility that the applicant, by virtue of his authority, was instrumental in such fabrication. These circumstances not only constitute strong evidence of misappropriation but also satisfy the ingredients of the offences under Sections 409 and 420 of IPC, as the depositors were deceived to part with their money on the strength of false financial statements.

40. Thus, the incorrect and manipulated figure of Rs. 1,40,27,010/- shown in the gold mortgaged account is a significant circumstance which prima facie supports the prosecution case that the financial records of the Society were deliberately falsified to cover up misappropriation and to cheat the investors.

41. The learned APP submitted that the applicant, while functioning as the Secretary of the Co-operative Society, was entrusted with fiduciary authority and occupied a position of confidence. Instead of safeguarding the interest of the members and acting in accordance with the bye-laws of the Society, the applicant is alleged to have misused his position by withdrawing large sums of money from the Society. The withdrawals were effected by way of debit entries in his "D.S. Savings Account" even when there was no balance available in the said account. Consequently, a continuous debit balance is reflected in the applicant's account at the Society level, which itself shows that the withdrawals were without authority and unsupported by any legitimate financial transaction.

42. On a careful perusal of the bank statements, it appears evident that the monies were directly credited into the personal account of the applicant and not into any account pertaining to the business, lending activities, or statutory obligations of the Society. Such diversion of funds into personal accounts, without authority, clearly indicates dishonest intention.

43. The learned APP further pointed out that there is absolutely no record to justify such withdrawals. Neither were any loan documents executed, nor was any collateral security offered by the applicant, nor is there any resolution of the Managing Committee or the Board of Directors sanctioning such amounts in favour of the applicant. This absence of authorisation or supporting documentation prima facie establishes that the withdrawals were made in breach of the rules and bye-laws of the Society and without the consent of its governing body.

44. At this stage, the Court cannot lose sight of the fact that a Secretary of a Co-operative Society holds a fiduciary position, and the depositors place implicit trust in such an office bearer. Misuse of such trust by diverting funds into one's personal account not only amounts to criminal breach of trust under Section 409 of the IPC, but also falls within the definition of "cheating" under Section 420 of IPC, as members were deceived into believing that their deposits were safe and would be used for the business of the Society.

45. Such conduct strikes at the very foundation of the co-operative movement, which is based on mutual trust and collective benefit. The continuous debit balance in the applicant's personal account, coupled with absence of loan records or authorisation, points to deliberate misappropriation of members' funds. This satisfies the ingredients of criminal breach of trust by a banker or agent, and provides strong prima facie material against the applicant at this stage.

46. The contention of the intervener also assumes significance. It is brought on record that senior citizens and small depositors were lured to invest under the assurance of quick returns. The receipts bear the signatures of the applicant himself in his capacity as Director and Secretary. The applicant was thus in a position of trust and authority, which he appears to have abused. The further fact that there are multiple FIRs registered against the applicant since 2017 for similar nature of offences, clearly demonstrates that he is a habitual offender in financial matters and that the possibility of repetition of offence, if released on bail, cannot be ruled out.

47. The record also shows that even after registration of the present offence, the applicant floated another bogus financial company in the name of his daughter and continued to collect money from common people. This subsequent conduct is a relevant factor which indicates that the applicant has not desisted from such illegal activities.

48. Economic offences involving public money stand on a different footing. The Supreme Court in *Nimmagadda Prasad v. CBI*, (2013) 7 SCC 466, has observed that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail, since such offences have a serious impact on the financial health of society and shake public confidence in financial institutions. Applying these principles to the present case, the scale of misappropriation, the number of depositors affected, and the applicant's continuing conduct, make this a fit case for refusal of bail.

49. The applicant is in custody since 7th February 2024 and the charge-sheet has been filed on 3rd May 2024. While ordinarily completion of investigation may weigh in favour of grant of bail, in the present case, the magnitude of fraud, the continuing nature of activities, and likelihood of tampering with records or influencing witnesses outweigh this factor.

50. In light of the above discussion, this Court is of the considered opinion that the applicant has failed to make out a case for grant of bail. The gravity of the offence, the nature of accusations, and the role attributed to the applicant, coupled with his antecedents and subsequent conduct, do not justify exercise of discretion in his favour.

51. Accordingly, the bail application stands rejected.

52. It is, however, made clear that the observations made hereinabove are only for the purpose of deciding the present bail application. They are prima facie in nature, based on the material collected during investigation, and shall not be construed as an expression of opinion on the merits of the case. The Trial Court shall consider the evidence independently and decide the case uninfluenced by any observations made in this order.

53. The bail application is disposed of.

(AMIT BORKAR, J.)